

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

BILLIE JO GARBER

V.

MARTIN J. O'MALLEY,  
*Commissioner of Social Security*

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CIVIL ACTION NO. 4:23CV190  
JUDGE MAZZANT/JUDGE JOHNSON

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On February 13, 2024, the Magistrate Judge entered a Report and Recommendation (Dkt. #18) that Defendant Martin J. O'Malley's, Commissioner of Social Security, Motion to Dismiss (Dkt. #12) be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Motion to Dismiss (Dkt. #12) is **GRANTED IN PART** and **DENIED IN PART**.

The Court lacks subject matter jurisdiction over Plaintiff Billie Jo Garber's claims regarding the overpayment of benefits to Plaintiff because she received a fully favorable decision resulting in a waiver of overpayment of benefits to Plaintiff. The Court also lacks subject matter jurisdiction over Plaintiff's claim regarding the waiver of the overpayment of benefits to AG because Plaintiff did not fully exhaust her administrative remedies as to this claim. The Court further lacks subject matter jurisdiction over Plaintiff's claims regarding the overpayment of

benefits to JG because Plaintiff lacks standing to assert a claim on JG's behalf. Therefore, the Motion to Dismiss (Dkt. #12) is **GRANTED** as to such claims and such claims are **DISMISSED WITHOUT PREJUDICE**.

The Motion to Dismiss (Dkt. #12) is **DENIED** as to Plaintiff's claim regarding the overpayment of benefits to AG because Plaintiff exhausted her administrative remedies as to this claim.

**IT IS SO ORDERED.**

**SIGNED this 1st day of March, 2024.**

A handwritten signature in black ink, reading "Amos Mazzant", written over a horizontal line.

AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE